

**United States Environmental Protection Agency  
Criminal Investigation Division  
Investigative Activity Report**

**Case Number**

0506-0026

**Case Title:**

Ferguson Enterprises Inc.

**Reporting Office:**

Detroit, MI, Resident Office

**Subject of Report:**

Interview of (b)(6), (b)(7) Senior Corporation Counsel, Detroit Law Department

**Activity Date:**

August 19, 2010

**Reporting Official and Date:**

(b)(6), (b)(7)(C) RAC

30-AUG-2010, Signed by: (b)(6), (b)(7) RAC

**Approving Official and Date:**

(b)(6), (b)(7)(C), SAC

03-SEP-2010, Approved by: (b)(6), (b)(7), SAC

**SYNOPSIS**

08/19/2010 - U.S. EPA CID Special Agent (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7) Deputy Corporation Counsel, Detroit Law Department regarding the contracting process, City of Detroit purchasing ordinance, and various Detroit Water & Sewerage Department contracts.

**DETAILS**

On August 19, 2010, U.S. EPA CID Special Agent (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) Deputy Corporation Counsel, Detroit Law Department. Also present during the interview was Assistant U.S. Attorney Mark Chutkow and (b)(6), (b)(7) Deputy Corporation Counsel, Senior Law Department. After being informed of the identity of the interviewing agent, (b)(6), provided the following information:

(b)(6), (b)(7) (b)(6), (b)(7)(C), Grosse Point Farms, MI 48326; DOB: (b)(6), ; office: (b)(6), - (b)(6), ; cell: (b)(6), (b)(7)(C)

(b)(6), has been employed by the Detroit Law Department since August of 1982. During the (b)(6), (b)(7)(C) tenure (b)(6), was a Senior Corporate Counsel in the Contracts Section. (b)(6), was assigned to handle all matters dealing with the Detroit Water & Sewerage Department (DWSD). (b)(6), (b)(7)(C) (nee (b)(6), ) was another Law Department attorney who handled DWSD issues.

The Water Board technically runs the DWSD and has the ability to give orders to the Director of the DWSD. (b)(6), recalled that the Water Board over ruled the DWSD.

(b)(6), heard from various DWSD contractors that they had been told that their contracts were being held up by the DWSD until they agreed to add (b)(6), (b)(7)(C) as a sub contractor. (b)(6), heard this within a couple months of (b)(6), (b)(7) first becoming the mayor. The contracts were held up in the sense that they were not forwarded to City Council for approval. (b)(6), (b)(7) and (b)(6), (b)(6), of the DWSD Contracts and Grants office were both very upset that the contracts were being held up. Walbridge and Motor City were two of the contractors who complained of having contracts held up. While (b)(6), is not privy to the list of sub contractors on DWSD contracts it does seem to (b)(6), that (b)(6), (b)(6), subsequently was getting a lot of sub contractor work after (b)(6), (b)(6), came into office. (b)(6), is not aware of (b)(6), (b)(6), doing any DWSD contract work before (b)(6), (b)(6), but did have demolition contracts. (b)(6), (b)(6), also had some contracts with the Department of Public Works but nothing in the \$10 million range. The DWSD has the right to approve of sub contractors in order to make sure they are qualified to do the work.

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The Special Administrators powers were established by Judge John Feikens after (b) became involved in the EPA suit against the City of Detroit. (b)(6), explained that the DWSD chronically had problems with violating the Clean Water Act. Judge Feikens found that part of the problem lie in the horribly run purchasing department so (b) established the Special Administrator. The Special Administrator has the ability to bypass the purchasing regulations and award contractors directly. Mayors (b)(6), (b) (7)(C) and (b)(6), (b) were named as Special Administrators. When a contract is awarded by the Special Administrator a competitive bid process is still used including the traditional evaluation and scoring portions, but the contract does not have to go to City Council for approval. Whether or not a contract was awarded by the Special Administrator depended on the urgency of the project and this was typically something advocated by the Deputy Director and/or Director of the DWSD.

(b)(6), went on to say that there were a great number of contracts written into one of the three federal consent decrees with EPA and the National Pretreatment Discharge Elimination System (NPDES) permit. These contracts have project descriptions and deadlines set in the NPDES permit and consent decrees as well. These types of projects are fast tracked and typically were awarded under the authority of the Special Administrator.

(b)(6), never saw evidence of a direct link of communication between (b)(6), (b) and the DWSD nor heard any complaints as such.

Regarding contract 844A which was for the security upgrades for various DWSD locations, (b)(6), explained that the ordinance states that the city must negotiate with the highest evaluated bidder and can move to second highest bidder if an agreement cannot be reached with the top bidder. (b)(6), recalled that (b)(6), (b) (7)(C) told (b) that (b) wanted to negotiate with both the top two bidders on 844A. (b)(6), was not sure if (b) met with (b)(6), (b) in (b) office when this discussion took place but (b) knows it was a one on one conversation. (b)(6), (b) told (b)(6), that (b) wanted to play the two bidders off each other in order to get a better price on the contract. (b)(6), advised (b)(6), (b) that the ordinance said that the DWSD must negotiate with one bidder at a time. (b)(6), commented to SA (b)(6), (b) (7) that Motor City, the highest bidder, did good work for a long time with the DWSD prior to this contract.

(b)(6), discussed (b)(6), (b) approach on 844A with (b)(6),. According to (b)(6), (b)(6), shared (b) concerns regarding the DWSD complying with the purchasing ordinance. Both (b)(6), and (b)(6), were frustrated about how the negotiations were structured. (b)(6), believes that (b)(6), would have confronted (b)(6), (b) on (b) own. (b)(6), commented that this was not the first time a director has rejected (b) advice.

(b)(6), (b) (7) was asked by Judge Feikens to conduct the investigation into the awarding of 844A and was named a Special Master.

(b)(6), was asked to comment on the fact that a handwritten note was affixed to one of the recommendation memos for 844A which stated that the recommendation was "not what the board intend" (b)(6), replied that the Water Board members are not involved in the negotiation phase of the contracts thus (b) finds this odd. (b)(6), commented that negotiating with two bidders was something (b)(6), (b) did on (b) own over the objection of (b) own staff.

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(b)(6), was aware that (b)(6), (b) asked the bidders to commit to a price with an agreement that no change orders would be submitted. (b)(6), (b) told (b)(6), that (b) could not get Motor City to commitment to a firm price. Once the contract was awarded (b)(6), did not have anything to do with it.

(b)(6), recalls hearing that contracts CM 2014 and 2015 were scored using an average cost method. (b)(6), told (b)(6), thinks that this change in scoring was made and (b)(6), thinks that (b)(6), (b) ordered it to be done. As far as (b)(6), knows this is the only time an average cost scoring has been used by DWSD.

(b)(6), told (b)(6), that the Detroit Headquartered Business (DHB) certification for DLZ was revoked. (b)(6), commented that (b) tries to have little to do with the Detroit Human Rights Department as possible as is it is politicized. (b)(6), pointed to the revocation of DLZ's DHB certificate as an example of this.

(b)(6), (b) issued an Executive Order in 2002 or 2003 regarding the evaluation of professional services contracts. This order allowed for the assignment of an "exorbitant" amount of points to DHB and Detroit Based Businesses. (b)(6), felt that this restricted the number of bidders as it shrank the pool of competitive companies. The companies which are not located within the city wouldn't even bother to bid on contracts. This drove up the prices of contracts as there was less competition.

(b)(6), described how four or five years ago (b) was involved in meetings regarding the possible sale of power from the city owned Minerisky power plant. Waterfront Petroleum and Eagle Energy proposed a plan to purchase the power from the plant and sell it to third party users. The plant representative (b) LNU told the group, including (b)(6), and (b)(6), (b)(6), that the plant was in such bad shape and could not deliver the power needed under the proposed deal. Despite this (b)(6), told (b)(6), they were going forward with the deal. When (b)(6), received a copy of the proposed contract it was radically different than what had been presented during the meeting. (b)(6), wrote a letter to (b)(6), (b) (7)(C) advising not to proceed with the deal. The deal was never completed.

The Garden View Estates (GVE) low income public housing project was originally structured the same as the previous public housing project the city completed. The U.S. Department of Housing & Urban Development had agreed to allow the city to pay for the installation of water, sewer lines, construct the streets and sidewalks and install public lighting and count this as matching funds for the Hope VI grant. This was discussed and agreed upon by the parties. Once the Detroit Housing Commission was spun off from the city and became its own entity the deal was changed. (b)(6), explained that HUD regulations prohibit the favoring of local contractors in awarding contracts. Either (b)(6), (b) or someone from (b) administration talked to the HUD administration and persuaded them to allow the Detroit Building Authority to hire local contractors for the infrastructure of GVE. For some reason the HUD representatives agreed to this. (b)(6), commented that this added another layer of approval and complexity to the process which only ended up slowing the project down. Having a construction manager at the site on the behalf of HUD and another for the DBA makes the execution more complex. The monetary value and scope of the infrastructure work at the site stayed the same.

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(b)(6), was not aware of the cancellation of DWSD contract 1361 but added that it is very rare that the director cancels a contract after the Water Board has approved it.

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